

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ALVIN D. MOANING ,

Plaintiff,

:

Case No. 3:11-cv-261

-vs-

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

:

OFFICER DAN ZWIESLER, et al.,

Defendants.

ORDER

On Agreed Motion (Doc. No. 23) and for good cause shown, pursuant to Fed. R. Civ. P. 41, Counts Two and Three of the Amended Complaint as to Defendant Dustin Payne and Count One of the Amended Complaint as to Defendant Payne in his official capacity are hereby dismissed without prejudice.

This Order renders moot Defendant Payne's Motion to Dismiss (Doc. No. 20).

February 15, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge